

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement
(916) 322-5662 322-5660 322-5901 322-6441

August 8, 1984

Warren Stanton
General Counsel
Galletti Bros. Foods
1729 East 21st Street
Los Angeles, CA 90058

Re: Your Request for Advice,
Our Advice No. A-84-142

Dear Mr. Stanton:

This letter is sent to confirm a telephone conversation that I had with Mr. Lee Cerni of your office. We agreed that I would not provide a written response at this time to Mr. Galletti's questions concerning Fish & Game Commission decisions involving Pacific mackerel. We reached this agreement because Galletti Brothers Foods is not now buying Pacific mackerel directly from commercial fishermen, and its business plans regarding Pacific mackerel are still uncertain.

Please feel free to contact this office for further advice in the future.

Sincerely,

A handwritten signature in cursive script, reading 'Diane Maura Fishburn'.

Diane Maura Fishburn
Counsel, Legal Division

DMF:km
Enclosure

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June 13, 1984

Warren Stanton
General Counsel
Galletti Brothers Foods
1729 East 21st Street
Los Angeles, CA 90058

Re: Your Request for Advice on Behalf of Abel C. Galletti;
Our Advice No. A-84-142 (Part 1)^{1/}

Dear Mr. Stanton:

You have requested advice on behalf of Mr. Abel C. Galletti, who is a Commissioner on the California Fish and Game Commission. You have stated the facts as follows:

Mr. Galletti is a 30% owner of Galletti Brothers Foods which has its principal office in Los Angeles, California and is a wholesale distributor of fresh and frozen fish and seafood. In early August of 1984, the Fish & Game Commission will be asked to vote on whether spotter airplanes can be used by commercial fishermen to locate swordfish for harpooning. At the present time, spotter airplanes are not permitted to directly assist harpoon fishermen in the taking of swordfish.

Swordfish are currently being caught in drifts nets by commercial fishermen and Galletti Brothers Foods is one of 105 Dealers that purchases swordfish from these sources. During the past year, Galletti Brothers Foods has purchased about 232,000 pounds of swordfish at a cost of approximately \$660,000. The margin of profit, of course, varies with market conditions. The swordfish purchase would amount to 1% of total dollar purchases made by Galletti Brothers Foods during this period.

If airplanes were permitted to directly assist harpoon fishermen, it is presumed that there would be more swordfish caught and consequently, available for purchase by all firms such

^{1/} Your request for advice is being answered in two parts. This portion has been expedited because of an immediately impending decision. The remainder of your request (relating to mackerel) will be answered within the normal time provided by statute. Government Code Section 83114(b).

Warren Stanton
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as Galletti Brothers Foods. The volume of such additional catch is impossible to predict - however, the proponents of the plan obviously feel it would be helpful in increasing the catch. Extending our assumption that there would be more swordfish available, Galletti Brothers Foods would have the opportunity to buy more swordfish and try to resell the product at a profit. The amount of such profit cannot be determined; however, based on available estimates there would be an additional 168,000 lbs. of swordfish made available as a result of permitting the use of spotter aircraft, and with 2,600,000 lbs. of swordfish being caught annually, this only represents an increase of approximately 6%; with Galletti Brothers Foods being able to buy an extra 15,000 lbs.

In addition to the foregoing facts provided in your letter, you have provided the following additional material facts in response to my telephone inquiry.

Galletti Brothers Foods (GBF) sells its products wholesale to large market chains (Vaughns) and to hotels. It does not sell retail. Last year, GBF had gross revenues of \$62 million, gross costs of \$52 million (for purchase of fish), leaving net revenues at \$10 million (includes overhead; is not "net profit").

Swordfish is currently being purchased by GBF at \$3.75/lb. and is being sold by GBF at \$4.15/lb., for a net revenue of \$.40/lb. Mr. Harold Cribbs, Executive Secretary to the Fish and Game Commission, confirms your estimate of approximately 15,000 pounds of extra swordfish being purchased by GBF as being the reasonably foreseeable result of the "spotter aircraft" decision.

QUESTION

You have asked whether Mr. Galletti is required by the Political Reform Act^{2/} to disqualify himself from making, participating in making, or in any way using his official position to influence the upcoming decision on use of spotter aircraft for swordfishing. (Section 87100)

ANALYSIS

The Political Reform Act requires disqualification where the official knows or has reason to know that he or she has a financial

^{2/} Government Code Sections 81000-91014. All statutory references are to the Government Code unless otherwise noted.

interest in a decision. (Section 87100.) A financial interest is defined in Section 87103, as follows:

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

(a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000).

* * *

(c) Any source of income, other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Each of the foregoing economic interests is present in Mr. Galletti's case. Obviously, he has an investment in GBF of more than \$1,000. (Section 87103(a)) He is clearly an officer, employee, etc., of GBF (Section 87103(d)) and GBF is just as clearly a source of income to him of \$250 or more during the last 12 months (Section 87103(c)).

Consequently, Mr. Galletti's disqualification will be required if the "spotter aircraft" decision will have a reasonably foreseeable material financial effect upon GBF which is distinguishable from the decision's effect on the public generally.

The Fair Political Practices Commission has provided guidelines for determining when a particular financial effect is material (2 Cal. Adm. Code Section 18702) and those guidelines are helpful here.

The reasonably foreseeable effect upon GBF's annualized gross revenues will be $\$4.15/\text{lb.} \times 15,000 \text{ lbs.} = \$62,250$. The effect upon GBF's annualized net revenues will be $\$.40/\text{lb.} \times 15,000 \text{ lbs.} = \$6,000$. Using the applicable tests in 2 Cal. Adm. Code Section 18702(b)(1)(A) and (B), we determine that because \$62,250 is more than \$1,000 and less than \$100,000, the 1% test is to be applied.

Warren Stanton
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(2 Cal. Adm. Code Section 18702(b)(1)(A).) For \$62,250 to equal 1% or more of GBF's gross revenues, GBF's annualized gross revenues would have to be no more than \$6.2 million. Instead, GBF's annualized gross revenues are 10 times that amount (\$62 million).

In the case of net revenues, we must apply the 1/2% test since annualized net revenues will be increased by \$6,000 which falls between \$1,000 and \$50,000. (2 Cal. Adm. Code Section 18702(b)(1)(B).) For a \$6,000 effect on annualized net revenues to constitute a material financial effect on GBF, its annualized net revenues would have to be \$1.2 million or less. Again, GBF's annualized net revenues are nearly 10 times that amount (\$10 million). Therefore, we conclude that, under the facts provided, there will be no reasonably foreseeable material financial effect upon GBF.

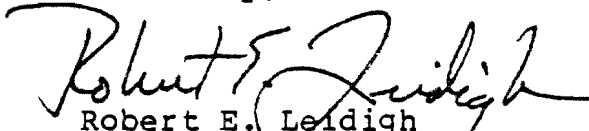
There remains one other possible financial interest of Mr. Galletti's to consider. Because he is a 10% or greater owner of GBF, sources of income to GBF are considered sources of income to him on a pro rata basis. (Section 82030(a).) Consequently, if the "spotter aircraft" decision will have a reasonably foreseeable material financial effect upon GBF's customers, then disqualification could be required. While we do not have sufficient financial data upon which to base a firm conclusion, it seems highly unlikely that the availability of 15,000 additional pounds of swordfish would have a material financial effect on supermarket chains or hotels. Unless Mr. Galletti knows or has reason to know that it will, disqualification is not required.

CONCLUSION

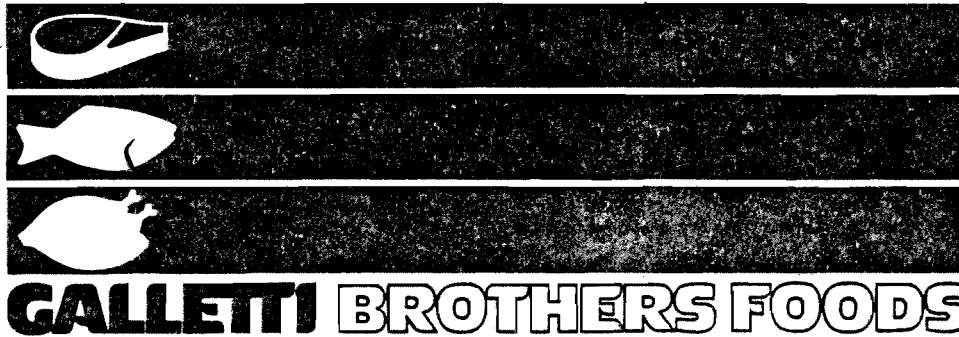
Mr. Galletti does not have a financial interest in the "spotter aircraft" decision within the meaning of the Political Reform Act and, therefore, the Act does not require that he disqualify himself.

Should you have any questions regarding this letter, please do not hesitate to contact me at 916/322-5901.

Sincerely,


Robert E. Leidigh
Counsel, Legal Division

REL:km



May 25, 1984

Fair Political Practices Commission
Box 807
Sacramento, California 95804
Attn: Barbara Millmore

Gentlemen:

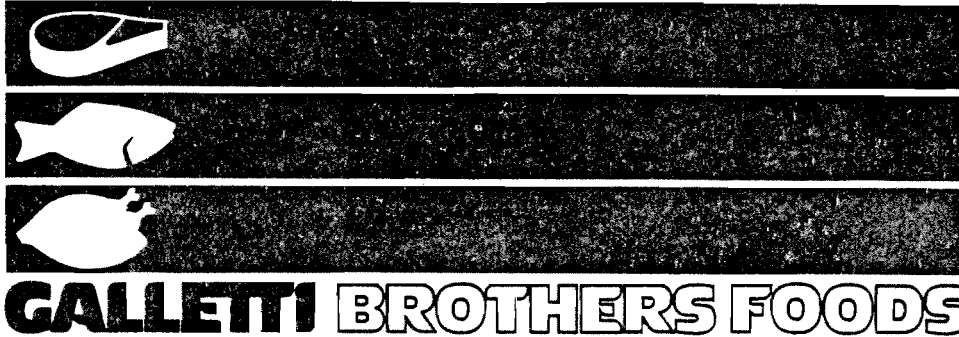
I am attorney for Mr. Abel C. Galletti, who is a Commissioner on the California Fish and Game Commission.

I would appreciate your evaluation of the following situation and your advice as to the most appropriate course of action under the circumstances:

Mr. Galletti is a 30% owner of Galletti Brothers Foods which has its principal office in Los Angeles, California and is a wholesale distributor of fresh and frozen fish and seafood. In early August of 1984, the Fish & Game Commission will be asked to vote on whether spotter airplanes can be used by commercial fishermen to locate swordfish for harpooning. At the present time, spotter airplanes are not permitted to directly assist harpoon fishermen in the taking of Swordfish.

Swordfish are currently being caught in drifts nets by commercial fishermen and Galletti Brothers Foods is one of 105 Dealer's that purchases swordfish from these sources. During the past year, Galletti Brothers Foods has purchased about 232,000 pounds of swordfish at a cost of approximately \$660,000. The margin of profit, of course, varies with market conditions. The swordfish purchase would amount to about 1% of total dollar purchases made by Galletti Brothers Foods during this period.

If airplanes were permitted to directly assist harpoon fishermen, it is presumed that there would be more swordfish caught and consequently, available for purchase by all firms such as Galletti Brothers Foods. The volume of such additional catch is impossible to predict-however, the proponents of the plan obviously feel it would be helpful in increasing the catch. Extending our assumption that there would be more swordfish available, Galletti Brothers Foods would have the opportunity to buy more swordfish and try to resell the product at a profit. The amount of such profit cannot



be determined; however, based on available estimates there would be an additional 168,000 lbs. of swordfish made available as a result of permitting the use of spotter aircraft, and with 2,600,000 lbs of swordfish being caught annually, this only represents an increase of approximately 6%; with Galletti Brothers Foods being able to buy an extra 15,000 lbs. The current market price to purchase swordfish is about \$3 per pound.

Mr. Galletti would prefer to vote on this issue and would, based on known factors at this time, probably vote in favor of the measure. Based on the information contained above, please furnish a written opinion as to whether Mr. Galletti can properly under applicable California law, vote on this issue.

Another aspect that we would appreciate your written opinion on, relates to the Commission's activity in the area of regulating the California Commercial Mackerel Fishery.

At the present time Galletti Brothers are buying small quantities from processors not fishermen, but plan in the future to buy mackerel directly from fisherman. Estimate of purchases would be approximately ten thousand lbs. per day.

The Commission is called upon from time to time, to amend it's regulations in Title 14 California Administrative Code Section 148 to set conditions for the taking of mackerel by commercial fisherman.

Recent legislation would also allow the Commission to increase or decrease fishing quotas for mackerel under specified conditions.

I have enclosed a summary sheet and other data concerning the Commission's responsibilities with respect to the management of both Swordfish and Mackerel. This should give you insight as to the development of these fisheries and any possible conflict of interest on the part of Mr. Galletti.

Since Mr. Galletti has to deal with this issue by June 15, 1984, time is of essence, and therefore would appreciate your prompt attention to this matter. If you have any questions concerning this history or the Commission's involvement with these two fisheries please contact Harold C. Cribbs Executive Secretary, City Fish & Game Commission (916) 455-5705.

Sincerely,

Warren Stanton
General Counsel

WS/bcv
Encls: